

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI  
JACKSON DIVISION**

**JAMES D. JOHNSON, as next friend to  
Olivia Y., et al.**

**PLAINTIFFS**

**vs.**

**CIVIL ACTION NO.: 3:04cv251LN**

**HALEY BARBOUR, as Governor of the  
State of Mississippi, et al.**

**DEFENDANTS**

**DEFENDANTS' EMERGENCY MOTION  
TO SEAL THE COURT RECORD CONCERNING EXHIBIT "4" TO OBJECTION TO  
SETTLEMENT FILED BY GEORGE WHITTEN, JR.**

1. On December 18, 2007, George Whitten, Jr. ("Whitten") filed "Objections to the proposed settlement of *Olivia Y. et al. v. Barbour, et al.*" See Docket Entry No. 443. Included with this filing were exhibits numbered 1 through 4. See Docket Entry No. 443-2. Exhibit 4, which is contained in pages 6 – 19 of docket entry number 443-2, is an excerpt from an internal memorandum written by Whitten while employed by the Mississippi Department of Human Services' and is subject to attorney-client and work product privileges. See Docket Entry 443-2, Exhibit 4.

2. The Defendants did not authorize Whitten to make use of this memorandum in any way and certainly did not give Whitten the authority to put this privileged memorandum into the public domain. Defendants have not waived the attorney-client privilege as to this document and are now asserting such privilege.

3. Defendants' counsel attempted to contact Whitten at the telephone number provided on the filed objection regarding the filing of this Motion and to inquire whether

Whitten would consent to the exhibit being sealed by the Court. Defendants left a voicemail for Whitten regarding the matter.

Based on the foregoing, Defendants respectfully requests that the Court enter an Order sealing Exhibit "4" of "Objections to the proposed settlement of *Olivia Y., et al. v. Barbour et al.*" (Docket Entry 443-2, pages 6-19).

DATED: December 19, 2007.

**HALEY BARBOUR, as Governor of the State of Mississippi; DONALD TAYLOR, as Executive Director of the Department of Human Services; and RICKIE FELDER as Director of the Division of Family and Children's Services**

BY: /s/ Dewitt L. ("Rusty") Fortenberry, Jr.

**OF COUNSEL:**

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this day electronically filed the foregoing with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

W. Wayne Drinkwater, Jr. Esq.  
Melody McAnally, Esq.  
BRADLEY ARANT ROSE & WHITE LLP

Stephen H. Leech, Esq.

Eric E. Thompson, Esq.  
CHILDREN'S RIGHTS, INC.

Harold E. Pizzetta, III  
Special Assistant Attorney General  
OFFICE OF THE ATTORNEY GENERAL

I also certify that I have this day served a copy of the foregoing on the following non-ECF participants by United States Mail, postage prepaid:

Marcia Robinson Lowry, Esq.  
Susan Lambiase, Esq.  
Shirim Nothenberg, Esq.  
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SO CERTIFIED, this the 19<sup>th</sup> day of December, 2007.

/s/ Dewitt L. ("Rusty") Fortenberry, Jr.